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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,452	08/11/2006	Hidemoto Kusaka	B-6104PCT 623685-3	7057

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EXAMINER	
DAVIS, DEBORAH A	

ART UNIT	PAPER NUMBER
1655	

MAIL DATE	DELIVERY MODE
07/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/589,452	KUSAKA, HIDEMOTO	
	Examiner	Art Unit	
	Deborah A. Davis	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 April 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 371 as follows: Applicant should recite in the first line of the specification that the current application claims the benefit of a 371 application.

Information Disclosure Statement

The information disclosure statement filed 1-25-07 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each reference listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-2 and 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the phrase "characterized in containing bamboo extract as a main ingredient" is indefinite because it is unclear as to what this phrase is intended to mean.

Claim 5 recites the phrase "characterized in mixed sodium hyaluronate mixed with bamboo extract" is confusing and indefinite, especially since there is no step in the process of adding sodium hyaluronate as part of the medicament.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Huang et al Publication No (CN0108741).

The claims are drawn to a beverage containing bamboo extract as a main ingredient obtained through the process of immersing bamboo in water and extracting the bamboo extract with heating the water to 95 degrees C or higher and maintaining the temperature for a period of 2 hr 45 min to 3 hr 15 min.

The reference of Huang et al discloses a natural bamboo juice beverage that includes bamboo juice obtained from fresh bamboo decoction wherein the preparation includes heating water as a diluent to 60 – 95 degrees C and adding bamboo juice (see abstract). This bamboo juice beverage appears to be the same as that taught in the instant claim 1 because both beverages are similarly made and heated with the same temperature, with the exception that Huang does not disclose how long the cited bamboo extract was heated.

In the alternative, even if the claimed extract composition is not identical to the reference extract composition with regard to some unidentified characteristics, the differences between that which is disclosed and that which is claimed are considered to be so slight that the referenced bamboo beverage is likely to inherently possess the same characteristics of the claimed bamboo beverage, particularly in view of the similar characteristics. Thus, the claimed bamboo beverage would have been obvious to those of ordinary skill in the art within the meaning of U.S.C. 103.

Accordingly, the claimed invention as a whole was at least prima facie obvious, if not anticipated by the reference, especially in the absence of sufficient, clear, and convincing evidence to the contrary.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

> the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over J. Xu Pub No. (CN1100609) in view of Kiyono et al Pub No. (JP63290825).

The claims are drawn to a beverage containing bamboo extract as a main ingredient obtained through the process of immersing bamboo in water and extracting the bamboo extract with heating the water to 95 degrees C or higher and maintaining the temperature for a period of 2 hr 45 min to 3 hr 15 min wherein the beverage is mixed with either herbs or spices or both.

The reference of Xu beneficially teaches a bamboo shaving drink obtained from fresh bamboo consisting of boiling the bamboo (i.e. heating) with licorice root (herbs or spices) in water.

The reference of Xu does not particularly point out the type of bamboo used to obtain the bamboo drink.

The reference of Kiyono et al beneficially teaches an antimicrobial comprising extract of Phyllostachys heterocycla. The extract can be heated in water with a temperature above 100 degrees C. The extract is effective to all bacteria, yeast or mould with little toxicity and can be added into foods or cosmetics.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further include a particular bamboo such as Phyllostachys heterocycla taught by Kiyono within the bamboo beverage of Xu based on the beneficial teachings provided by Kiyono et al (i.e. its antimicrobial properties). The adjustment of particular conventional working conditions (i.e. temperatures and the heating duration)

is deemed merely a matter of judicious selection and routine optimization, which is well within the purview of the skilled artisan.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of the evidence to the contrary.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi et al Pub No (JP2004337151).

The claims are drawn to a medicament mixed with sodium hyaluronate and bamboo extract obtained through the process of immersing bamboo in water and extracting the bamboo extract with heating the water to 95 degrees C or higher and maintaining the temperature for a period of 2 hr 45 min to 3 hr 15 min.

The reference of Hayashi et al beneficially teaches a health food and oral antitumor agent (i.e. a medicament) comprising hyaluronic acid (sodium hyaluronate), a bamboo extract and other ingredients therein (see abstract e.g.). Hayashi discloses

that the bamboo was soaked in an alcoholic or water alcoholic solution and heated at about 60 degrees C for about 2 hours. Hayashi discloses that Phyllostachys pubescens (i.e. phyllostachys heterocycla) is a type of bamboo that can be used in the referenced health food. (see 0010 – 0011 e.g.).

Although the reference of Hayashi does not particularly point out the same temperature and length of time the bamboo was heated as recited in the instant claims, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the temperature and length of time the bamboo was heated because it is well within the purview of the skilled artisan and deemed as judicious selection and routine optimization to adjust conventional working conditions.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of the evidence to the contrary.

Conclusion

No claims are allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah A. Davis whose telephone number is (571) 272-0818. The examiner can normally be reached on 8-5 Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McKelvey Terry can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

D. A. D.

Deborah A. Davis
Patent Examiner
Art Unit 1655
July 2007

CHRISTOPHER R. TATE
PRIMARY EXAMINER